City of Lafayette Staff Report

To:	City Council
Meeting Date:	April 13, 2009
From:	Glenda Warmoth, Assistant Planner
Date Written:	March 24, 2009
Subject:	Agreement relating for installation and maintenance of existing and new landscaping between property owners, Kent Gordon and the City of Lafayette, for property located at 7 Mountain View Place. APN 241-100-034

Introduction

The attached agreement relating to the installation and maintenance of existing and new landscaping between Kent Gordon and the City of Lafayette was one of the conditions of approval for design review application HDP21-08. The attached agreement meets the requirements for approval.

Recommendation

Accept agreement relating to installation and maintenance of existing and new landscaping and authorize the City Clerk to record.

Record at the request of City of Lafayette
Return to:
City of Lafayette
Attn: Glenda Warmoth, Assistant Planner
3675 Mt. Diablo Boulevard, Suite 210
Lafayette, CA 94549

AGREEMENT FOR INSTALLATION AND MAINTENANCE OF EXISTING AND NEW LANDSCAPING

THIS AGREEMENT is made this _____ day of _____, _____, between Kent Gordon(s) hereafter referred to as "Property Owner," and the CITY OF LAFAYETTE, a Municipal Corporation, hereafter referred to as "City."

RECITALS

THIS AGREEMENT is based upon the following facts:

1. Property Owner is the owner of real property in the City of Lafayette, 7 Mountain View Place, (Assessor's Parcel Number 241-100-034) described in Exhibit "A" attached to this Agreement and made a part of it by this reference;

2. On February 24, 2009, the City granted a Design Review Approval to the Property Owner in accordance with the zoning ordinance of the City of Lafayette.

3. By the terms of the Design Review Approval, the Property Owner is required to install and maintain landscaping in accordance with a plan approved by the City on February 24, 2009, a copy of which is on file in the City Office to which reference is made for further particulars;

4. Both parties recognize that the installation and maintenance of landscaping is an integral part of the Property Owner's plan for development of the property, and is necessary to carry out the purpose and intent of the City's Land Use regulations, and that the development would not have been approved by City without the assurance that this Agreement would be executed by Property Owner.

NOW, THEREFORE, IT IS AGREED BETWEEN THE PARTIES, as follows:

1. PURPOSE. The purpose of this Agreement is to assure (a) installation of the landscaping in accordance with landscape plan previously approved by the City and (b) continued maintenance and care of the existing landscaping.

2. PROPERTY SUBJECT TO AGREEMENT. The property which is the subject of this Agreement is described in Exhibit "A" which is attached to this Agreement and incorporated in it by this reference.

3. CITY PROCEEDINGS. Reference is made to the Design Review Commission proceedings conducted by the City (Planning File No.HDP21-08) and the landscaping plan for the property, a copy of which is on file in the City Offices.

4. LANDSCAPING AS A BENEFIT. Property Owner agrees that the landscaping which he/she is obligated to provide will materially benefit his/her property and is necessary to comply with the #35 condition(s) imposed by the City as a requirement of the development of the property.

5. DUTY TO INSTALL AND MAINTAIN LANDSCAPING. Property Owner agrees to complete the installation of the approved landscaping prior to final building inspection approval, and diligently to maintain and care for the landscaping which he/she installs, using generally accepted methods of cultivation and watering. Property Owner shall maintain that standard care necessary to prevent the landscaping from deteriorating to the extent that its value as landscaping is destroyed.

6. CITY MAY MAINTAIN LANDSCAPING. Property Owner agrees that if he/she fails to meet the standard of maintenance necessary to keep the landscaping in a healthy condition, the City will give written notice of the deficiency to the owner who shall have 20 days to make the necessary correction, and if the correction is not made within 20 days the City may elect to take the steps necessary to assure that the landscaping is maintained and cared for. To do this, the City shall service a notice of its intent to enter the premises for this purpose. The City shall either personally serve the notice upon the Property Owner or mail a copy of it by Certified Mail at the Property Owner's last known address, or as shown on the tax rolls at least 15 days in advance of the date when it intends to enter the premises. For this purpose, the City may enter upon the property and perform such work as it considers reasonably necessary and proper to restore and maintain the landscaping. The City may act either through its own employees or through an independent contractor.

7. CITY'S COSTS OF MAINTENANCE A LIEN. If the City incurs costs in restoring or maintaining the landscaping after following the procedure set forth in Paragraph 6 above, the City shall make demand on the Property Owner for payment, if the Property Owner fails to pay the costs incurred by the City within 30 days of the date demand was made, the City may make the costs a lien upon the real property described in Exhibit "A" by recording a notice that it has incurred expenses under the terms of this Agreement with the County Recorder of Contra Costa County. The notice shall state the fact that the City has incurred the costs under the terms of this Agreement and shall state the amount, together with the fact that it is unpaid, and draws interest at the rate of 7 percent a year until paid.

9. ADDITIONAL REMEDIES. The City may as an alternative to the lien procedure set forth above in Paragraph 7, bring legal action to collect the sums due as the result of making of expenditures for restoration and maintenance of the landscaping. The Property Owner agrees that if legal action by the City is necessary to collect the amount expended by the City, the Property Owner agrees to pay the City a reasonable sum as attorney's fees and court costs, together with interest from the date which is 30 days after the City has given its notice, under Paragraph 6 above.

10. NOTICES. Notice given by each party to this Agreement shall be given to the other party at the address shown below:

Notices to the City shall be addressed to the Planning Services Manager, City of Lafayette, 3675 Mt. Diablo Boulevard, Suite 210, Lafayette, CA 94549. Notices to the Property Owner shall be addressed to him/her at the following address:

Kent Gordon
3 Mountain View Place
Lafayette, CA 94549

When Property Owner ceases to be the owner, he/she may file with the City a notice to that effect containing the name and address of the new owner and a copy of the deed. Upon doing so, the subsequent Grantee is charged with the obligation under this Agreement.

10. MISCELLANEOUS TERMS AND PROVISIONS:
   (a) If any provision of this contract is adjusted invalid, the remaining provisions of it are not affected.
   (b) Notice to Property Owner shall be considered to have been given to him/her when sent to his/her address above stated.
   (c) This writing contains a full, final and exclusive statement of the contract of the parties.
   (d) Property Owner appoints the City as his/her Attorney-in-fact, to do all acts and things which the City considers necessary to restore or maintain the landscaping approved under the Design Review Commission proceedings.
   (e) If there is more than one signer of this Agreement as Property Owner, their obligations are joint and several.
   (f) The obligations upon the owner signing this Agreement terminates personally as to him/her when he/she conveys his/her interest in the property and files for record with the County Recorder a copy of assignment of this Agreement. In this case the new owner(s) takes title subject to the requirements of this agreement.

11. AGREEMENT ATTACHES TO LAND. This Agreement pertains to and runs with the real property described in Exhibit "A". This Agreement binds the successors in interest of each of the parties to it.

12. CITY MAY REQUIRE ADDITIONAL SECURITY. If upon execution of this Agreement or during the course of performance the City considers that it is necessary to have the Property Owner post additional security to guarantee the performance of his/her obligations, the City may require the Property Owner to post additional security. The City may require either a cash deposit or a surety bond guaranteeing performance, signed by sureties, and in a form deemed satisfactory to the City. The condition of the security shall be that if the Property Owner fails to perform his/her obligations under this Agreement, the City may in the case of a surety bond require the sureties to perform the obligations of the Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year above written.

CITY OF LAFAYETE:

_____

Mayor, City of Lafayette

ATTEST:

_____

City Clerk

PROPERTY OWNER(S):

_____

Kent Gordon, Property Owner

_____

Property Owner, Property Owner

NOTE: Property Owner's signature(s) must be notarized on a separate notary sheet. Signatures must match letter-for-letter with printed name on this agreement.

ATTACHMENTS: Exhibit "A" Legal Description

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of Contra Costa }

On March 18, 2009 (Date) before me, Joanne Lee Robbins notary public (Here Insert Name and Title of the Officer)

personally appeared Kent Gordon (Name(s) of Signer(s))

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

JOANNE LEE ROBBINS
COMM. #1834010
Notary Public-California
CONTRA COSTA COUNTY
My Comm. Exp. FEB 10, 2013

Place Notary Seal Above

Signature Joanne Lee Robbins (Signature of Notary Public)

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Installation & Maintenance of Existing & New Landscaping

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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LEGAL DESCRIPTION

EXHIBIT "A"

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF LAFAYETTE, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE:

PORTION OF LOT 60, MAP OF LAFAYETTE HEIGHTS, FILED June 17, 1912, MAP BOOK 7, PAGE 163, CONTRA COSTA COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING ON THE EAST LINE OF THE COUNTY ROAD KNOWN AS MOUNT VIEW DRIVE, AT THE NORTH LINE OF SAID LOT 60; THENCE FROM SAID POINT OF BEGINNING, NORTH 88° 09' 30" EAST ALONG SAID NORTH LINE, 188.08 FEET TO THE NORTHWEST CORNER OF THE PARCEL OF LAND DESCRIBED AS PARCEL ONE, IN THE DEED TO DORIS I. BLACKWOOD, RECORDED January 3, 1945, BOOK 809, PAGE 177, OFFICIAL RECORDS; THENCE SOUTH 26° 38' WEST, 158 FEET; THENCE SOUTH 4° 53' WEST, 11.45 FEET; THENCE SOUTH 88° 09' 30" WEST, 50.66 FEET TO THE EAST LINE OF THE PARCEL OF LAND DESCRIBED AS PARCEL ONE IN THE DEED TO WILLIAM E. BOYD, ET UX, RECORDED MARCH 8, 1950, BOOK 1518, PAGE 28, OFFICIAL RECORDS; THENCE ALONG THE EAST LINE OF SAID BOYD PARCEL, AS FOLLOWS: NORTH 21° 22' 50" WEST, 132.11 FEET; NORTH 58° 17' WEST, 21.08 FEET; AND NORTH 2° 16' EAST, 13.67 FEET TO THE POINT OF BEGINNING.

PARCEL TWO:

"A RIGHT OF WAY (NOT TO BE EXCLUSIVE)", CREATED IN REFERENCE TO THE PREMISES IN THE DEED TO WILLIAM E. BOYD, ET UX, RECORDED MARCH 8, 1950, BOOK 1518, OFFICIAL RECORDS, PAGE 428, "FOR USE AS A ROADWAY FOR VEHICLES OF ALL KINDS, PEDESTRIANS AND ANIMALS, FOR WATER, GAS, OIL AND SEWER PIPE LINES, AND FOR TELEPHONE, ELECTRIC LIGHT AND POWER LINES, TOGETHER WITH THE NECESSARY POLES OR CONDUITS TO CARRY SAID LINES" OVER A STRIP OF LAND, 10 FEET IN WIDTH, THE WEST LINE OF WHICH IS PARALLEL WITH AND 10 FEET WESTERLY, MEASURED AT RIGHT ANGLES, FROM THE EAST LINE THEREOF, AND WHICH EAST LINE IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE PARCEL OF LAND DESCRIBED AS PARCEL ONE IN SAID DEED TO BOYD; THENCE FROM SAID POINT OF BEGINNING, ALONG THE EAST LINE OF SAID BOYDE PARCEL, AS FOLLOWS: NORTH 44° 11' 50" WEST, 15 FEET; NORTH 21° 22' 50" WEST, 136.06 FEET; AND NORTH 58° 17' WEST, 21.08 FEET TO THE EAST LINE OF MOUNTAIN VIEW DRIVE.

THE SOUTH TERMINUS OF SAID STRIP OF LAND IS THE SOUTH LINE OF SAID BOYD PARCEL AND THE NORTHERLY TERMINUS THEREOF IS THE EAST LINE OF SAID MOUNTAIN VIEW DRIVE.

PARCEL THREE:

A PORTION OF LOT 60, AS DESIGNATED ON THE MAP ENTITLED, "R. N. BURGESS COMPANY'S MAP OF LAFAYETTE HEIGHTS", WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, ON June 17, 1912, IN VOLUME 7 OF MAPS, AT PAGE 163, BEING FURTHER DESCRIBED AS FOLLOWS:

A PORTION OF THE LAND DESCRIBED IN THE GRANT DEED FROM WILLIAM E. BOYD AND ELIZABETH F. BOYD TO KIRKE M. ALLEN AND ELIZABETH N. ALLEN, DATED July 16, 1953 AND RECORDED July 27, 1953, IN BOOK 2166 OF OFFICIAL RECORDS, AT PAGE 355, CONTRA COSTA COUNTY RECORDS.

COMMENCING AT THE MOST NORTHEASTERLY CORNER OF THE AFORESAID ALLEN PARCEL (2166 OR 355); THENCE LEAVING SAID POINT OF BEGINNING, SOUTHWESTERLY ALONG THE EASTERLY PROPERTY LINE OF SAID ALLEN PARCEL (2166 OR 355), SOUTH 26° 38' 00" WEST, 93.00 FEET TO THE ACTUAL POINT OF BEGINNING; THENCE FROM SAID POINT OF BEGINNING, LEAVING SAID EASTERLY LINE, SOUTH 7° 08' 28" WEST,78.21 FEET; THENCE NORTH 82° 51' 32" WEST, 21.05 FEET; THENCE NORTH 4° 58' 17" EAST, 16.95 FEET TO A POINT THAT BEARS SOUTH 26° 38' 00" WEST, 65 FEET FROM THE POINT OF BEGINNING; THENCE NORTH 26° 38' 00" EAST, 65 FEET TO THE POINT OF BEGINNING.

APN: 241-100-033